

GLORIA T. BRUCE
C. VINCE BRUCE

IBLA 84-359

Decided June 26, 1985

Appeal from a decision of the California State Office, Bureau of Land Management, declaring a mining claim abandoned and void for failure to file annual proof of labor or notice of intent to hold the claim. CA MC 104800.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

The owner of a mining claim located after Oct. 21, 1976, is required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982), to file a notice of intention to hold the claim or evidence of assessment work performed on the claim, in the county where the location notice is of record and in the proper office of BLM prior to December 31 of each year following the calendar year in which the claim is located. Failure to file the instrument required by the statute constitutes an abandonment of the claim.

APPEARANCES: Gloria T. Bruce, for appellants.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Gloria T. Bruce and C. Vince Bruce appeal from a decision of the California State Office, Bureau of Land Management (BLM), dated February 3, 1984, declaring the Funny Farms #3 placer mining claim, CA MC 104800, abandoned and void because no proof of labor or notice of intention to hold was filed with BLM for the 1982 calendar year. 1/ In accordance with section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982), one or the other document was required to be filed with BLM prior to December 31, 1982.

1/ The decision also declared the Funny Farms placer mining claim CA MC 104790 abandoned and void for the same reason. Appellants in their statement of reasons indicate that they have abandoned the Funny Farms claim and appeal the decision as it relates to the Funny Farms #3 claim.

The Funny Farms #3 claim was located on December 29, 1981, and recorded with BLM on February 10, 1982. The record indicates that no evidence of assessment work or notice of intention to hold for this claim was filed with BLM prior to December 31, 1982.

On appeal to the Board, appellants assert that because the location notice for the Funny Farms #3 claim was not recorded until January 5, 1982, no assessment work for the claim was required to be filed in 1982. They advise that a copy of assessment work was filed in 1983 for the claim.

[1] Section 314 of FLPMA, 90 Stat. 2769, 43 U.S.C. § 1744 (1982), provides in pertinent part:

Sec. 314(a) * * * The owner of an unpatented lode or placer mining claim located after the date of this Act shall, prior to December 31 of each year following the calendar year in which the said claim was located, file the instruments required by paragraphs (1) and (2) of this subsection:

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, on [sic] a detailed report provided by the Act of September 2, 1958 (72 Stat. 1701; 30 U.S.C. 28-1), relating thereto.

(2) File in the Office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

* * * * *

(c) The failure to file such instruments as required by subsections (a) and (b) shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner.

Appellants are mistaken in their assertion that they were not required to file either an affidavit of assessment work or notice of intention to hold the claim in 1982. While it is true that there was no obligation under 30 U.S.C. § 28 (1982) to commence assessment work until the year starting September 1, following location, the recordation statute requires that annual filing be made beginning the year after the date of location of the claim, not the year following recordation. Thus the owner of an unpatented mining claim located in 1981, as was the Funny Farms #3, was required to file a notice of intent to hold the claim, in the county recorder's office where the location notice is of record and in the proper office of BLM, prior to December 31, 1982. No proof of labor or notice of intent to hold the Funny

Farms #3 claim was filed with BLM in 1982, consequently BLM properly declared the claim to be abandoned and void. This Board has no authority to waive noncompliance with the statutory requirements. Lynn Keith, 53 IBLA 192, 88 I.D. 396 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Will A. Irwin
Administrative Judge

